

## **CHAPTER 9**

### **FOREIGN AND DEPLOYMENT CLAIMS**

#### **REFERENCES**

1. AR 27-20, Claims (31 December 1997).
2. AR 27-40, Litigation (19 September 1994).
3. DA Pamphlet 27-162, Claims (1 April 1998).
4. USARCS Federal Tort Claims Handbook (September 1998).
5. JA 241, Federal Tort Claims Act (May 2000).
6. DA Pamphlet 27-50-282, The Army Lawyer (Claims Report).
7. Claims Forum, JAGCNet.
8. JAGINST 5890.1 (JAGMAN) (17 January 1991).
9. JAGINST 5800.7C, chapter 8 (30 October 1990).
10. AFI 51-501, Tort Claims (1 May 1996).
11. AFI 51-502, Personnel and Government Recovery Claims (1 March 1997).

#### **INTRODUCTION**

Most deployments, mobilizations, disaster relief operations, or routine field exercises involve the movement of large amounts of equipment and personnel. Careful planning and execution can reduce the amount of property damage or loss and personal injuries that occur during such operations. Some damage, loss, and injuries are unavoidable, however, and claims will definitely result. Claimants will include local residents, host nation governments, allied forces, and even U.S. service members. To ensure friendly relations with the local population and maintain the morale of our own troops, deploying judge advocates must be prepared to thoroughly investigate, impartially adjudicate, and promptly settle all meritorious claims.

#### **SINGLE SERVICE RESPONSIBILITY**

Department of Defense Directive 5515.8, Single Service Assignment of Responsibility for Processing of Claims, assigns to each service exclusive geographical responsibility for settling tort claims against and on behalf of all of the Department of Defense. However, this Directive is often amended by memorandum. When processing tort claims, judge advocates must use the rules and regulations of the service that has single service responsibility for the country in which the claim arose. The current single service responsibility assignments are listed in Appendix A. If a judge advocate is deploying to an area where single service responsibility has not yet been established, it may be appropriate to seek an interim assignment of responsibility from the responsible Unified or Specified Commander. This is accomplished through the command claims service responsible for the area of operations.

#### **POTENTIAL CLAIMS**

The statutes and regulations that provide relief for damages resulting from deployments often overlap. To determine the proper claims statutes and regulations to apply, one must look to the applicable regulations, the status of the claimant, the location of the incident giving rise to the claim, and the type of incident. Although a judge advocate may encounter some of the same types of claims while deployed as seen at their home station, most deployment claims operations will differ from those conducted in garrison in several respects. Additionally, not all "claims" for payment (for example, claims arising out of a contract) are cognizable under the military claims system.

## TYPES OF CLAIMS APPLICABLE DURING A DEPLOYMENT

Claims Cognizable under the Federal Tort Claims Act (FTCA).<sup>1</sup> The Federal Tort Claims Act provides a limited waiver of sovereign immunity for the negligent or wrongful acts or omissions of government employees acting within the scope of employment. In other words, if someone is harmed by the tortious conduct of one of our service members or employees, they may file a claim. If the FTCA claim is not settled satisfactorily, the claimant may sue in Federal court. The FTCA is an exclusive remedy when applicable. However, the FTCA will not apply in most deployments because it does not cover acts or omissions that occur outside the United States. As a practical matter, the FTCA will apply most often in U.S.-based disaster relief operations.<sup>2</sup>

Claims Cognizable under the Personnel Claims Act (PCA).<sup>3</sup> The PCA applies worldwide; however, it is limited to claims for loss, damage, or destruction of personal property of military personnel and Department of Defense civilian employees that occur incident to service. Valid PCA claims commonly arising in deployment situations include: loss of equipment and personal items during transportation; certain losses while in garrison quarters; losses suffered in an emergency evacuation; losses due to terrorism directed against the United States; and the loss of clothing and articles being worn while performing military duties. No claim may be approved under the PCA when the claimant's negligence caused the loss. Prompt payment of service members' and civilians' PCA claims is essential to maintenance of positive morale in the unit. Unit claims officers must be prepared to comply fully with small claims procedures immediately upon arrival at the deployment or exercise site.<sup>4</sup>

Claims Cognizable under the Military Claims Act (MCA).<sup>5</sup> The MCA also applies worldwide. CONUS tort claims must first be considered under the FTCA, however. Overseas, the MCA will apply only when the claim cannot be paid under the PCA or the Foreign Claims Act. These limitations generally restrict application of the MCA overseas to claims made by family members accompanying the force. There are two bases of liability under the MCA. The first requires damage or injury caused by an "act or omission determined to be negligent, wrongful, or otherwise involving fault of military personnel . . . acting within the scope of their employment." The second permits a form of absolute liability for damage or injury caused by "noncombat activities." "Noncombat activities" are defined as an activity "essentially military in nature, having little parallel in civilian pursuits."<sup>6</sup> Examples include maneuver damage caused by the administrative movement of troops and equipment to and from military operations and exercises, and military training.

Claims Cognizable under the Foreign Claims Act (FCA).<sup>7</sup> The FCA is the most widely used claims statute in foreign deployments. Since the FCA applies only overseas and, therefore, is not used routinely by CONUS-based claims offices, judge advocates and unit claims officers must familiarize themselves with its provisions and compile as much supporting information (e.g., country law summaries) as possible before deployment. Under the FCA, meritorious claims for property losses, injury or death caused by service members or the civilian component of the U.S. forces may be settled "[t]o promote and maintain friendly relations" with the receiving state. Claims that result from "noncombat activities" or negligent or wrongful acts or omissions are also compensable.<sup>8</sup> Categories of claims that may not be allowed include losses from combat, contractual matters, domestic obligations, and claims which are either not in the best interest of the U.S. to pay, or which are contrary to public policy.<sup>9</sup>

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<sup>1</sup> 28 U.S.C. §§ 2671 – 2680.

<sup>2</sup> For more information on disaster relief operations *see* Noncombat Deployment Operations, *infra*.

<sup>3</sup> 31 U.S.C. § 3721.

<sup>4</sup> Under the small claims procedures set forth in AR 27-20, paras. 11-10 and 2-17, personnel claims that can be paid for \$1,000 or less and tort claims that can be settled for \$2,500 or less should be settled or paid within one working day of receipt. Although the claims officer cannot ensure payment of these claims, early coordination with the finance and accounting office and the designated Class A agent will also speed up the payment process.

<sup>5</sup> 10 U.S.C. § 2733.

<sup>6</sup> AR 27-20, Glossary, sec. II.

<sup>7</sup> 10 U.S.C. § 2734.

<sup>8</sup> AR 27-20, para. 10-3.

<sup>9</sup> AR 27-20, para. 10-4.

Similar to the MCA, claims under the FCA may be based either on the negligent or wrongful acts or omissions of U.S. military personnel or the noncombat activities of U.S. forces. Unlike the MCA, however, there generally is no scope of employment requirement. The only actors required to be “in scope” for the United States to have liability are local nationals of the host nation who work for the United States. The FCA allows payment of claims filed by inhabitants of foreign countries for personal injury, death, or property loss or damage caused by U.S. military personnel outside of the United States. “Inhabitants” includes receiving state and other non-U.S. nationals and all levels of receiving state government. These are proper claimants.<sup>10</sup> Enemy or “unfriendly” nationals or governments, insurers and subrogees, U.S. inhabitants, and U.S. military and civilian component personnel, if in the receiving state incident to service, are improper claimants.<sup>11</sup>

FCA claims should be presented in writing to U.S. or other authorized officials within two years of accrual. Oral claims may be accepted, but they must later be reduced to writing. All claims, oral or written, should state the time, place and nature of the incident; the nature and extent of damage, loss, or injury; and the amount claimed. A claim must be stated in the local currency or the currency of the country of which the claimant was an inhabitant at the time of loss.<sup>12</sup>

FCA claims are investigated and adjudicated by foreign claims commissions (FCC). FCCs may have one or three members. They are usually comprised of judge advocate claims officers, although unit claims officers often serve as single member commissions as well. At least two members of three-member FCCs must be judge advocates or claims attorneys. Regardless of their composition, proper authority must appoint FCCs.<sup>13</sup> These appointments should take place before deployment whenever possible. All legal offices subject to mobilization or deployment should identify FCC members and alternates as a part of their predeployment planning.

In adjudicating claims under the FCA, the FCC applies the law of the country in which the claim arose to determine both liability and damages. This includes the local law or custom pertaining to contributory or comparative negligence and to joint tortfeasors. Punitive damages, court costs, attorney fees, bailment and filing costs are not allowed. Before deploying, judge advocates should become familiar with the application of foreign law and attempt to compile local law summaries for all countries in which the unit is likely to conduct operations.<sup>14</sup> After deployment, claims personnel may contract for local attorney assistance or obtain information on local law and custom from the U.S. Consulate or Embassy located in country.<sup>15</sup>

Once the FCC issues its final decision, and the claimant signs the settlement form, the FCC then certifies the claim to the local Defense Finance and Accounting Office for payment in local currency. If an FCC intends “to deny a claim, award less than the amount claimed, or recommend an award less than claimed but in excess of its authority,” it must notify the claimant. This notice will give the claimant an opportunity to submit additional information for consideration before a final decision is made. When a FCC proposes an award to a claimant, it also forwards a settlement agreement that the claimant may either sign or return with a request for reconsideration.

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<sup>10</sup> AR 27-20, para. 10-2a.

<sup>11</sup> AR 27-20, para. 10-4h and i.

<sup>12</sup> AR 27-20, para. 10-9b.

<sup>13</sup> In the Army, normally the Commander of the U.S. Army Claims Service appoints FCCs. The U.S. Army Claims Service has developed an “off-the shelf” appointment package and can assist in the speedy appointment of FCCs. Unless otherwise limited in an appointment letter, a one-member FCC who is either a judge advocate or a claims attorney may pay or deny claims for up to \$15,000. Line-officer commissioners may pay claims for up to \$2,500, although they have no denial authority. A three-member FCC may deny claims of any amount, and settle claims for up to \$50,000. Two members of a three-member FCC constitute a quorum, and decision is by majority vote. U.S. Army Claims Service (USARCS) is the settlement authority for claims in excess of \$50,000. The Secretary of the Army or his designee will approve payments in excess of \$100,000. All payments must be in full satisfaction of the claim against the U.S., and all appropriate contributions from joint tortfeasors, applicable insurance, or Article 139, UCMJ, proceedings must be deducted before payment. Advance payments may be authorized in certain cases. See AR 27-20, paras. 10-6 to 10-9.

<sup>14</sup> Before deploying, Army Judge Advocates responsible for unit claims management should contact the chief of claims in the SJA office of the unified command responsible for that particular country and the U.S. Army Claims Service, Tort Claims Division, Foreign Torts Branch, Fort Meade, Maryland 20755-5360 (Comm 301-677-7009/DSN 923-7009) for further information and guidance.

<sup>15</sup> Although the Army claims regulation does not specifically set out conflicts of laws provisions, general principles applicable to tort claims are set out in AR 27-20, para. 3-5. These principles may be used in situations where the local law and custom are inapplicable because of policy reasons, or where there is a gap in local law coverage.

Claims Cognizable under International Agreements (SOFA Claims).<sup>16</sup> As a general rule, the FCA will not apply in those foreign countries with which the U.S. has an agreement that “provides for the settlement or adjudication and cost sharing of claims against the United States arising out of the acts or omissions of a member or civilian employee of an armed force of the United States.”<sup>17</sup> For example, if a unit deploys to Korea, Japan, or any NATO country, claims matters will be managed by a command claims service under provisions outlined in the applicable status of forces agreement.<sup>18</sup>

A deployment to a SOFA country places additional predeployment responsibilities on judge advocates. First, knowledge of the claims provisions contained in the applicable SOFA is mandatory. Second, judge advocates must be aware of receiving state procedures for the settlement of claims. The SJA element of the deploying unit “may legitimately expect and plan for technical assistance from the servicing command claims service and should coordinate with that service prior to deployment.”

Claims Cognizable under the Public Vessels Act (PVA) and Suits in Admiralty Act (SAA). The PVA and SAA provide broad waivers of sovereign immunity for property damage and personal injury claims arising from maritime torts caused by an agent or employee of the government, or a vessel or other property in the service of the government. Such claims typically arise from the negligent maintenance or operation of government vessels or aircraft. Claims may also take the form of demands for compensation for towage and salvage services, including contract salvage, rendered to a government vessel or to other property owned by the government.<sup>19</sup>

Both the PVA and SAA contain two-year limitation periods running from the date of the event upon which a claim is based. No administrative claim is required under the PVA and SAA. However, when a claim lies under the Admiralty Jurisdiction Extension Act, 46 U.S.C. app. § 740, a claim is required. If a claim is filed, unlike a FTCA claim, no particular form is needed to assert an admiralty tort claim. However, a claimant will bear the burden of providing evidence from which government liability and the full measure of damage can be determined with a reasonable degree of certainty. Filing a claim does not toll the two-year limitation period. If an admiralty tort claim is denied, a claimant’s only recourse is to file suit in federal district court within the two-year limitation.

Unlike the FTCA, the waiver of immunity under the PVA and SAA includes admiralty tort claims arising in international waters or in the territorial waters of a foreign country. While the PVA and SAA contain no express exceptions to their broad waivers, as does the FTCA, most federal courts have incorporated, by implication, the discretionary function exception into the PVA/SAA.

Applicability of International Agreements to Admiralty Claims. Admiralty claims may or may not fall under the applicable SOFA. All personal injury or death claims arising from the operation of an U.S. government vessel or the actions of government personnel in a host country’s territorial waters are adjudicated by the host country under a SOFA’s claims provisions. However, property damage claims arising from the navigation or operation of a ship usually fall outside the terms of the SOFA. In some instances, however, supplementary agreements may further modify the provisions of a SOFA. In Japan, for example, certain small fishing vessel and net damage claims were brought within the scope of the SOFA adjudication by the 1960 Note Verbale to the SOFA, even though the damage is caused by a U.S. warship.

Separately, government-to-government admiralty claims for damage are waived by parties to a SOFA under the so-called “knock for knock” provisions. Even when you suspect that a knock-for-knock agreement may apply, it is still important to investigate and document all admiralty incidents and to contact your claims branch for guidance.

Claims Cognizable Under UN or NATO Claims Procedures. In special circumstances, U.S. personnel may be assigned to a UN or NATO headquarters unit and may cause damage or injury to a third party. In such cases, special UN

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<sup>16</sup> 10 U.S.C. § 2734a (commonly referred to as the International Agreement Claims Act).

<sup>17</sup> *Id.*

<sup>18</sup> See figure 7-4, DA PAM 27-162 for a list of U.S. sending state and single-services offices.

<sup>19</sup> Specific guidance on each service’s settlement authority and claims processing procedures is set forth at: 10 U.S.C. § 7622 and 32 C.F.R. § 752.1-752-5 (Navy); 14 U.S.C. § 646 and 33 C.F.R. Part 25 (Coast Guard); 10 U.S.C. § 4802-4806 and 33 C.F.R. § 536.44-536.45 (Army); 10 U.S.C. § 9802 and 32 C.F.R. Part 842 (Air Force).

or NATO claims procedures may apply and the UN or NATO may actually pay the claim. If faced with such a situation, judge advocate should contact their command claims service for guidance.

Solatia Payments.<sup>20</sup> If a unit deploys to the Far East or parts of Asia, judge advocates must consider the custom, widespread in that area of the world, of making solatia payments to accident victims. Solatia payments are not claims payment. They are payments in money or in kind to a victim or to a victim's family as an expression of sympathy or condolence. These payments are immediate, and generally nominal. The individual or unit involved in the damage has no legal obligation to pay; compensation is simply offered as an expression of remorse in accordance with local custom. Solatia payments are not paid from claims funds but, rather, from unit operation and maintenance budgets. Prompt payment of solatium ensures the goodwill of local national populations, thus allowing the U.S. to maintain positive relations with the host nation. Solatia payments should not be made without prior coordination with the highest levels of command for the deployment area.<sup>21</sup>

Article 139 Claims.<sup>22</sup> Article 139, UCMJ, authorizes collection of damages directly from a service member's pay for willful damage to or wrongful taking of property by military personnel acting outside the scope of their employment. During deployments, Article 139 claims are handled just as they are at the installation. The processing of these claims overseas, however, presents unique logistical challenges. Special Court-Martial Convening Authorities (SPCMCA), who function as appointing and final action authorities for Article 139 claims, may be geographically separated from the investigating officer and the reviewing claims judge advocate. Every unit must prepare for these challenges and contingencies during predeployment planning.

Real Estate Claims. A Corps of Engineer Real Property Team will settle the majority of claims arising from the use of real estate. These claims are based upon contract principles and are paid from O&M funds, not claims expenditure allowances. Coordination and regular communication between the judge advocate and the engineers after deployment is essential. Judge advocates should also be aware that not all claims for damage/use of real estate are based on contract. Some are based on tort law and may be considered as claims under the FCA or MCA.

During lengthy deployments, rapid turnover of real estate officers is common. In Operation Joint Endeavor/Guard/Forge in Bosnia and Herzegovina, for instance, the Corps of Engineers rotated civilian real estate officers into the area of operations on sixty-day tours. To define responsibilities between the Engineer Real Property Team and the claims office concerning real estate in Bosnia and Herzegovina, the U.S. Army Europe (USAREUR) Staff Judge Advocate and the USAREUR Director of Real Estate signed technical implementing guidance to the OPORD. This guidance provides overall policies and procedures to be used in processing of claims for the use of real property for which there is no lease during the operation.<sup>23</sup>

Claims Involving Non-appropriated Fund Instrumentalities (NAFI). Frequently, FCCs will receive claims involving NAFIs. Although FCCs may adjudicate such a claim, the FCC will not actually pay the claimant unless the damage was "caused" by the U.S. Forces or a DoD appropriated fund employee. Therefore, the FCC should coordinate with the local manager of the NAFI prior to investigating the claim. Some NAFI managers have independent authority to settle small claims. For example, Army and Air Force Exchange store managers have authority to settle claims up to \$2,500. If the NAFI has the authority, it may settle the claim. If not, the FCC will investigate and adjudicate the claim as the FCC would any other FCA claim. However, instead of making payment, the FCC will forward the adjudicated claim to NAFI for payment.

Affirmative Claims. An affirmative claim is a claim asserted by the United States against a tortfeasor or a tortfeasor's insurance company. If claims personnel believe the possibility exists for an affirmative claim, and they can identify a party that the claim can be asserted against, this should be reported to the responsible claims service. In countries where the Department of the Army has single-service claims responsibility, the responsible claims service may appoint a recovery judge advocate to assert and collect payment. Recovery judge advocates should keep in mind that

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<sup>20</sup> See, e.g., AR 27-20, paras. 10-10 and 13-13 and DA PAM 27-162, paras. 10-10 and 13-13.

<sup>21</sup> Army judge advocates must also coordinate with U.S. Army Claims Service.

<sup>22</sup> 10 U.S.C. § 939. See generally ch. 9, AR 27-20 and ch. 9, DA PAM 27-162.

<sup>23</sup> For an example of implementing guidance for real property claims, see Appendix D, Enclosure 4, *infra*.

after assertion, they may not have the authority to terminate or settle the claim for less than the full amount. This authority may rest with the responsible claims service or higher depending on the amount of the claim. In addition, claims against foreign governmental entities have to be coordinated with USARCS and approved by TJAG.

## **PREDEPLOYMENT PLANNING**

Many factors must be considered during predeployment planning. All personnel involved in the claims mission must be properly trained. Principal players must be properly appointed. Further, international agreements with the host nation, or other references that will impact on the claims operation must be located. These agreements, and the application of local law to determine liability and damages under certain claims statutes, can give rise to unique ethical and conceptual challenges. All of these aspects of the claims operation must be considered.<sup>24</sup>

**Training.** The initial step in any successful claims operation is the establishment of education and prevention programs. The first aspect of these programs is training. Claims judge advocates must ensure that all parties to the claims operation are properly trained on not only legal requirements, but also required military skills for potential deployed environments (e.g., weapons training, vehicle licensing, combat lifesaver training, etc.). This should be an ongoing part of the daily mission, whether or not deployment is contemplated. Claims judge advocates, attorneys, and legal NCOs and specialists must know the procedures for serving as Foreign Claims Commissions (FCC), Foreign Claims NCOICs, and operating Special Claims Processing Offices. Claims personnel must also brief service members and unit claims officers on how to avoid property damage or loss and personal injuries. These briefings should also address procedures for documenting and reporting preexisting damage. Finally, claims personnel should ensure that unit claims officers (UCO) and Maneuver Damage Claims Officers (MDCO) know and understand the proper procedures for investigating claims, compiling evidence, and completing reports and forms. Claims avoidance, reporting, and investigation procedures must be addressed long before the unit begins actual operations.

**Appointment Orders.** Principal players in deployment claims operations include UCOS, MDCOs, and FCCs. Ordinarily, prior to any deployment, each company or battalion-sized unit appoints a UCO and, depending upon the equipment and mission of the unit, a MDCO. These individuals document and investigate every incident that may result in a claim either against or on behalf of the United States. UCOS and MDCOs coordinate their investigations with either servicing judge advocates or FCCs. Recognition and documentation of possible claims, and initial contact with claimants often rests with UCOS and MDCOs. They are, therefore, a very important asset to the claims operation. Units are responsible for appointing UCOS and MDCOs, nevertheless, claims personnel should stand ready with formats and regulatory guidance to assist them in this endeavor.

## **NONCOMBAT DEPLOYMENT OPERATIONS**

The operation of deployment claims offices varies depending upon the type and location of operation. Flexibility, therefore, is essential. An overseas location may present language barriers and logistical challenges, such as where to locate claims offices and how to coordinate the investigation, adjudication, and payment phases of the claims process. Nevertheless, some aspects of the operations, such as the need for a cooperative environment and consistent procedures for payment and processing, remain constant.

**Disaster Relief and CONUS Deployment Claims.** Generally, when we think of deployments, we think of overseas operations in preparation for combat, peace enforcement, or peacekeeping operations. However, these are not our only deployment operations. Consider the tragic Gander air crash in 1985, the 1991 volcanic eruption of Mount Pinatubo in the Philippines, and the military's role in the aftermath of Hurricane Andrew. The military is called to react to these types of disasters both within and outside of the continental United States. These operations place a great demand on claims personnel.<sup>25</sup> Claims offices must have operational claims disaster plans to execute claims contingencies when called upon

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<sup>24</sup> See also Claims Deployment Checklist in the Checklist chapter of this Handbook.

<sup>25</sup> In November 1998, U.S. Army Claims Service published a Disaster Claims Handbook designed to be a stand-alone guide for use in providing claims services during a disaster. This handbook consolidates the provisions from AR 27-20, DA Pam. 27-162, and other publications that are relevant to disaster claims. It also contains additional materials and forms necessary to provide disaster claims relief, including a model disaster claims plan and suggested annexes. This handbook will be updated periodically and is available on the JAGC Net. See DISASTER CLAIMS HANDBOOK, U.S. Army Claims Service, November 1998, on JAGCnet for more information on disaster claims operations.

to compensate persons harmed by military activities that cause the disasters, as well as military disaster relief activities that cause further harm. Additionally, the Army is DoD's executive agent for tort claims arising from chemical disasters under the purview of the Chemical and Biological Defense Command, and has other significant responsibilities for the resolution of tort, maneuver damage, and personnel claims arising from man-made natural disasters.

**Logistical Support.** Proper logistical planning and coordination is essential to effective deployment claims operations. During most deployments, claims processing is a complex, full-time job requiring dedication of substantial personnel and equipment assets. Claims investigators will have to travel frequently to visit areas where damages, losses, and injuries are alleged to have occurred. Depending on the security and force protection orders in effect during a given operation, claims personnel may have to deal with a variety of issues and planning factors that are not directly related to the adjudication and payment of claims. For example, several rotations of claims personnel in Bosnia were subject to force protection rules that prohibited them from leaving their base camps except in four-vehicle convoys with crew-served weapons. Convoy itineraries had to be submitted to and approved by the G2 several days in advance of the proposed mission. Unfortunately, the SJA office did not have the vehicles or weapons (e.g., crew-served weapons) necessary to comply with applicable force protection orders, so extensive coordination with supported units and other staff sections was critical.

While claims forms, legal memoranda, and finance vouchers do not necessarily have to be typed, clerical duties still comprise a significant portion of the claims mission. FCCs must receive adequate clerical support to perform effectively. Equipment support is also essential. Whenever possible, claims judge advocates should have available a mobile legal office, including a laptop computer with claims software and email capability.

Every unit's claims deployment plan must address three areas: the projected location of the claims office, claims investigation, and payment of claims. The initial steps in an effective deployment claims operation are the establishment of a central location for the receipt of claims and publication of this location to the local population. During the early stages of a deployment, this may mean simply erecting a tent. As the operation progresses, however, it is wise to establish a more substantial and permanent facility, if possible. The G-5 and Public Affairs Offices can publish the location and hours of operation of the office. The local embassy and civil affairs personnel, if available, may also be helpful in disseminating information on the claims operation.

Transportation assets will be limited in any deployment. Judge advocates and other claims investigators must, however, be able to travel to claim sites. This requires the exclusive use of some type of vehicle(s). Claims personnel should be licensed and trained on how to properly operate and maintain dedicated vehicles. If claims offices are unable to procure sufficient vehicles to support their operations, they may also seek assistance in investigating claims from embassy and civil affairs personnel, as well as unit claims officers. Local national insurance adjusters may serve as additional sources of information and assistance in the investigation and adjudication of claims.

After claims personnel have adjudicated a claim, they must be able to pay the claim. Payment requires the presence of a Class A agent and a sufficient amount of local currency. Don't assume that finance offices will supply you with Class A agents. You may have to train unit or legal personnel to be certified to act in this capacity. Security is always a concern. In Somalia, claimants often walked away from the claims office only to be robbed or shot to death within minutes. Still another issue is the "type" of money used to fund the operation. The money used to pay for claims filed under the FCA comes from the claims expenditure allowance. Not only must claims be paid from claims funds, they must be charged to the proper fund cite, which is tied to the payment authority for the claim (MCA, PCA, FCA, etc.). These issues must be resolved during predeployment planning through extensive coordination with unit comptroller personnel and higher level claims offices with claims appropriations.

## **COMBAT CLAIMS**

**Effect of International Agreements.** Provisions in international agreements between the U.S. and host nation governments regarding claims processing and adjudication generally do not affect combat claims. Most bilateral Military Assistance Agreements to which the U.S. is a party have no claims provisions. If there is a status of forces or other agreement that addresses claims issues, it may be suspended in time of armed conflict.<sup>26</sup> The agreement may also exclude

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<sup>26</sup> For example, NATO SOFA Art. XV, provides that in the event of hostilities, a party may suspend the SOFA by giving 60 days notice.

claims arising from “war damage.” One option the judge advocate should investigate, however, is concluding an agreement under which the host nation assumes responsibility for paying all claims that result from any combat activity.<sup>27</sup>

Noncombat Claims Arising on Conventional Combat Deployments. A basic principle embodied in U.S. claims statutes is that damage resulting directly from combat activities<sup>28</sup> is not compensable. For example, claims resulting either from “action by an enemy” or “directly or indirectly from an act of the armed forces of the United States in combat” are not payable under the Foreign Claims Act.<sup>29</sup> Claims personnel must, however, distinguish between combat related claims and noncombat claims that arise in a combat setting. Claims unrelated to combat activities will arise under the Foreign Claims Act, the Military Claims Act,<sup>30</sup> and the Personnel Claims Act,<sup>31</sup> which provide compensation to service members for property losses due to enemy action. Solatia<sup>32</sup> payments are not barred by the combat activities rule and will commonly be based on injury or death resulting from combat activities. Claims under Article 139 of the UCMJ<sup>33</sup> and real estate claims also arise in combat deployments. The judge advocate must be prepared to process all of these claims, and a Class A agent must be present to pay claims in the local currency for FCA claims and in U.S. dollars for PCA and MCA claims.

Combat Claims Arising on Conventional Combat Deployments. The combat-related claims exclusion often directly interferes with the principal goal of low intensity conflict/foreign internal defense - obtaining and maintaining the support of the local populace. Our recent combat deployments provide us with insight into how we can maintain the support of the local population while observing the legal restrictions on combat-related damages.

Each of our substantial combat scenarios over the last 30 years have been unique. The three major deployments before the Gulf War—Vietnam, Grenada, and Panama—provide an historical precedent of methodologies used to deal with combat claims. In Vietnam, the South Vietnamese government agreed to pay all claims generated by military units of the Republic of Vietnam, the United States, and the Free World forces.<sup>34</sup> After Operation Urgent Fury in Grenada in 1983, the U.S. Department of State initiated a program to pay for combat-related death, injury, and property damage as an exception to the restrictions imposed by the combat activities exclusion.<sup>35</sup> Following Operation Just Cause (OJC) in Panama, the United States provided funds to the government of Panama to both stimulate the Panamanian economy and to help Panama recover from the effects of OJC. These funds were used for emergency needs, economic recovery, and development assistance. The U.S. also provided Panama credit guarantees, trade benefits, and other economic assistance programs.<sup>36</sup>

Requisitions under the Law of War. The impact of lawful requisitions of private property on the battlefield is an often overlooked area of deployment claims. Under the law of war, a soldier may requisition any type of property

<sup>27</sup> For example, South Vietnam had responsibility for processing and paying all combat claims generated by U.S. and "Free World forces."

<sup>28</sup> Combat activities are defined as “[a]ctivities resulting directly or indirectly from action by the enemy, or by the U.S. Armed Forces engaged in, or in immediate preparation for, impending armed conflict.” Glossary, sec. II, AR 27-20.

<sup>29</sup> 10 U.S.C. § 2734.

<sup>30</sup> 10 U.S.C. § 2733.

<sup>31</sup> 31 U.S.C. § 3721.

<sup>32</sup> See notes 20 – 22 and accompanying text.

<sup>33</sup> 10 U.S.C. § 939.

<sup>34</sup> Dep’t of the Army, Vietnam Studies, Law of War: Vietnam 1964-1073, Prugh, George S., Major General; Wash. D.C. 1975.

<sup>35</sup> At the conclusion of combat in Grenada, it quickly became apparent that the U.S. could not refuse to pay for combat-related damage if it wanted to maintain the support of the Grenadian citizens. With the claims statutes providing no means to make such payments, the Department of State entered a Participating Agency Servicing Agreement between the U.S. Agency for Internal Development (USAID) and the U.S. Army Claims Service (USARCS) that allowed for payment of combat claims. This agreement established a nonstatutory, gratuitous payment program outside of the combat activities exclusion using USAID funds. USARCS provided personnel to staff FCCs to process requests, investigate, and recommend payment or denial of claims.

<sup>36</sup> This was done in Panama to support the Endara government and help to establish its legitimacy. Our mission was to support the legitimate government, not to act in place of it. The U.S. and Panama agreed to a Letter of Instruction (LOI) that established the procedures to be followed, listed categories of claims deemed not compensable, and set monetary limits for claims under the Foreign Claims Act that were not barred by the combat claims exclusion. These commissions proceeded to adjudicate and recommend payment on the combat-related claims, essentially using the same procedures already established for the payment of claims under the Foreign Claims Act and incorporating the special requirement of the LOI. \$1,800,000 of USAID money was made available: \$200,000 to support the claims office and personnel and the remainder to pay claims.



whenever there is a valid military necessity.<sup>37</sup> Although public property may be “seized” as the need arises in combat, the appropriation of private property for such purposes may result in allowable claims for damage or destruction of the property. The combat exclusion may obviate many such claims, but the U.S. may still be liable for damage or destruction of the property if it was bailed to the U.S. under either an express or implied agreement.<sup>38</sup> To ensure proper documentation of requisition claims, the servicing judge advocate must implement a procedure to document and describe all requisitioned items. A system using bilingual property receipts distributed down to the UCOs might prove effective, for example.

## **APPENDICES**

- A. Assignment of Single Service Responsibility
- B. Unit Claims Officer Deployment Guide
- C. Deployment Claims Office Operation Outline
- D. Sample Deployment Claims SOP

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<sup>37</sup> A common example is the taking of private vehicles for tactical transportation. U.S. forces took vehicles in Operations Urgent Fury, Just Cause, and Desert Storm. Other lawful examples would be the taking of food to feed service members who cannot be resupplied because of the tactical situation or the billeting of service members in private dwellings if other suitable shelter is not available.

<sup>38</sup> AR 27-20, para. 10-3c(2).

## APPENDIX A

### Assignment of Single-Service Responsibility for Tort Claims

SERVICE	COUNTRY	AUTHORITY
ARMY	Albania	Approved, John McNeil, 17 Apr 96
	Austria	DoD Directive 5515.8, 9 Jun 90
	Belarus	Approved, John McNeil, 17 Apr 96
	Belgium	DoD Directive 5515.8, 9 Jun 90
	Bosnia and Herzegovina	Memo, David Koplow, 7 Jul 99
	Bulgaria	Approved, John McNeil, 17 Apr 96
	Croatia	Memo, David Koplow, 7 Jul 99
	Czech Republic	Approved, John McNeil, 17 Apr 96
	El Salvador	DoD Directive 5515.8, 9 Jun 90
	Estonia	Approved, John McNeil, 17 Apr 96
	Federal Republic of Yugoslavia	Memo, David Koplow, 7 Jul 99
	Federal Republic of Germany	DoD Directive 5515.8, 9 Jun 90
	Former Yugoslavian Republic of Macedonia	Memo, David Koplow, 7 Jul 99
	[France]	Reassigned to Air Force, 25 Nov 96
	Grenada	DoD Directive 5515.8, 9 Jun 90
	Haiti	Memo, John McNeil, 22 Sep 94
	Honduras	DoD Directive 5515.8, 9 Jun 90
	Hungary	Approved, John McNeil, 17 Apr 96
	Kuwait	DA Pam 27-162, paragraph 1-11
	Latvia	Approved, John McNeil, 17 Apr 96
	Lithuania	Approved, John McNeil, 17 Apr 96
	The Marshall Islands	DoD Directive 5515.8, 9 Jun 90
	Moldova	Approved, John McNeil, 17 Apr 96
	Montenegro	Memo, David Koplow, 7 Jul 99
	The Netherlands	Memo, John McNeil, 1 Sep 94
	Poland	Approved, John McNeil, 17 Apr 96
	Republic of Korea	DoD Directive 5515.8, 9 Jun 90
	Romania	Approved, John McNeil, 17 Apr 96
	Rwanda	Memo, John McNeil, 1 Sep 94
	Serbia	Memo, David Koplow, 7 Jul 99
	Slovak Republic	Approved, John McNeil, 17 Apr 96
	Slovenia	Approved, John McNeil, 17 Apr 96
	Switzerland	DoD Directive 5515.8, 9 Jun 90
	Ukraine	Approved, John McNeil, 17 Apr 96
	US-NATO / Singapore SOFAs	DoD Directive 5515.8, 9 Jun 90
	Receiving State in USA	DoD Directive 5515.8, 9 Jun 90
NAVY	Bahrain	DoD Directive 5515.8, 9 Jun 90
	Greece	Memo, John McNeil, 1 Sep 94
	Iceland	DoD Directive 5515.8, 9 Jun 90
	Israel	DoD Directive 5515.8, 9 Jun 90
	Italy	DoD Directive 5515.8, 9 Jun 90
	Portugal	DoD Directive 5515.8, 9 Jun 90
	Spain	Memo, John McNeil, 1 Sep 94
	[Tunisia]	Reassigned to Air Force, 17 Apr 96
	United Arab Emirates	Approved, John McNeil, 17 Apr 96
	Vietnam (war era)	DoD Directive 5515.8, 9 Jun 90

AIR FORCE	Australia	DoD Directive 5515.8, 9 Jun 90
	Azores	DoD Directive 5515.8, 9 Jun 90
	Canada	DoD Directive 5515.8, 9 Jun 90
	Cyprus	DoD Directive 5515.8, 9 Jun 90
	Denmark	DoD Directive 5515.8, 9 Jun 90
	Egypt	DoD Directive 5515.8, 9 Jun 90
	France	Memo, William Dalton, 25 Nov 96
	[ <del>Greece</del> ]	Reassigned to Navy 1 Sep 94
	India	DoD Directive 5515.8, 9 Jun 90
	Iraq	DA Pam 27-162, para. 1-11
	Japan	DoD Directive 5515.8, 9 Jun 90
	Luxembourg	DoD Directive 5515.8, 9 Jun 90
	Morocco	DoD Directive 5515.8, 9 Jun 90
	Nepal	DoD Directive 5515.8, 9 Jun 90
	[ <del>the Netherlands</del> ]	Reassigned to Army 1 Sep 94
	Norway	DoD Directive 5515.8, 9 Jun 90
	Oman	DoD Directive 5515.8, 9 Jun 90
	Pakistan	DoD Directive 5515.8, 9 Jun 90
	Saudi Arabia	DoD Directive 5515.8, 9 Jun 90
	[ <del>Spain</del> ]	Reassigned to Navy 1 Sep 94
	Tunisia	Approved, John McNeil, 17 Apr 96
	Turkey	DoD Directive 5515.8, 9 Jun 90
	United Kingdom	DoD Directive 5515.8, 9 Jun 90
	CENTCOM Operations*	DoD Directive 5515.8, 9 Jun 90
	USSOC*	DoD Directive 5515.8, 9 Jun 90
*Applicable only in countries not otherwise assigned to the Army or Navy		

Changes from assignments made in DOD Directory 5515.8, 9 Jan 90, are noted by listing the original assignment, in brackets and crossed out, with an appropriate notation in the Authority block. These countries are also listed under the currently assigned service.

## **APPENDIX B**

### **UNIT CLAIMS OFFICER DEPLOYMENT GUIDE**

**I. PURPOSE.** To provide information regarding the use of Unit Claims Officers (UCOs) to investigate and document claims incidents on behalf of Foreign Claims Commissions (FCCs) during deployments.

**II. INTRODUCTION.** Any deployment of U.S. forces into a foreign country (a “receiving state”), may cause damage to the personnel and property of either the U.S. or the receiving state and its inhabitants. Willful misconduct or negligent acts and omissions on the part of U.S. or receiving state personnel can cause these damages. Ordinarily, prior to deployment, each company- or battalion-sized unit appoints a UCO to investigate and document every incident that may result in a claim either against or on behalf of the U.S.

#### **III. INVESTIGATION REQUIREMENT.**

A. Prompt and thorough investigations will be conducted on all potential and actual claims against or in favor of the government. Information must be collected and recorded, whether favorable or adverse. The object of the investigation is to gather, with the least possible delay, the best possible evidence without accumulating excessive evidence concerning any particular fact.

B. Occasions upon which immediate investigations are required include when non-governmental property is lost or damaged by a government employee, an actual claim is filed, a receiving state national is killed by the act or omission of a government employee, or when a competent authority so directs.

**IV. APPOINTMENT PROCEDURES.** Commanders appoint commissioned officers, warrant officers, noncommissioned officers or qualified civilian employees as UCOs as an additional duty. The appointment orders (Enclosure 1) should instruct the UCO to coordinate with a designated Judge Advocate or attorney who services the UCO’s unit. UCOs must seek guidance from the servicing judge advocate at the beginning and before the conclusion of the investigation whenever the claim is or may be for more than \$2,500. Copies of UCO appointment orders should be forwarded to the appropriate command claims service or servicing claims activity.

#### **V. UCO RESPONSIBILITIES**

A. Predeployment Prevention Program. UCOs should coordinate with the servicing judge advocate to advise unit personnel of particular aspects of the pending deployment or the receiving state that could cause particular claims problems. Depending upon the mission and the unit, UCOs should also coordinate with the designated Maneuver Damage Control Officers (MDCOs) to ensure investigative efforts are not duplicated.

B. Conduct of Investigations. UCOs will conduct immediate investigations, the duration and scope of which will depend upon the circumstances of the claims incident itself. UCOs will often be required to coordinate their investigations with criminal or safety investigations, which have priority for access to incident sites and witnesses. The reports of such investigations can be extremely useful to UCOs in the completion of their own investigations. In certain cases, UCOs themselves may be doing the bulk of investigation, and are required to safeguard all evidence that may be used in subsequent litigation. To this end, UCOs should interview all possible witnesses and reduce their statements to writing; secure police reports, statements to insurance companies, hospital records, and even newspaper accounts. It is not necessary that the statements are sworn; claims adjudications are administrative matters in which decisions are based upon a preponderance of the evidence. UCOs must consult with the servicing judge advocate before disposing of any evidence.

##### **C. Claims Reports**

1. Form of the Report. In claims incidents that have or may have a potential value in excess of \$2,500, UCOs complete DA Form 1208 and attach all available evidence for review by the responsible FCC or Affirmative Claims Authority. Insignificant or simple claims with an actual or potential value of less than \$2,500 may require only a cover

memorandum explaining the attachments, if any, and the UCOs findings. The servicing judge advocate can provide guidance as to which form is better. In certain cases, such as when a formal AR 15-6 investigation is conducted, the claims report may be submitted on DA Form 1574 (Report of Proceedings).

2. Content of the Report. The factual circumstances surrounding the claims incident must be detailed in the claim report, regardless of the format actually used. In vehicular accidents, for example, the questions found at Enclosure 2 can be used to develop a sufficient factual basis by even an unschooled investigator. UCOs should never make findings or recommendations as to liability or the dollar value of personal injuries in the claims report. These determinations should be left to the responsible judge advocate; and if the UCO feels that something must be said in this regard, the UCO should document this on a separate document to accompany the claims report. Specific instructions on how to complete the claims report (DA Form 1208) are at Enclosure 3.

## **ENCLOSURES**

1. Unit Claims Officer Appointment Order
2. Investigators Interview Checklist for Vehicle Accidents
3. Instructions for Completing DA Form 1208 (Report of Claims Officer)

Enclosure 1 - Unit Claims Officer Appointment Order

**DEPARTMENT OF THE ARMY  
HEADQUARTERS AND HEADQUARTERS COMPANY  
99<sup>TH</sup> ARMORED DIVISION  
UNIT 10000, APO AE 09000**

ABCD-EF-HHC

1 September 2000

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Duty Appointment

1. Effective 12 September 2000, 1LT Joe Jones, Unit Mailing Address, DSN phone number, DEROS is assigned the following duty:

**UNIT CLAIMS OFFICER**

2. Authority: AR 27-20, para 2-2d(1)(a).
3. Purpose: As indicated in the applicable directives.
4. Period: 12 September 2000 until officially released or relieved from appointment of assignment.
5. Special Instructions: This memorandum supersedes all previous appointments to this assignment. Unit claims officer will coordinate all claims investigation activities with MAJ Brown, OIC of the Bad Drecksfeld Legal Service Center.

FRED E. SMITH  
CPT, AR  
COMMANDING

## Enclosure 2 - Investigators Interview Checklist for Vehicle Accidents

### 1. **Personnel Information.**

- a. Full name.
- b. Birth date.
- c. Social security number.
- d. Unit.
- e. Home address.
- f. Permanent home address.
- g. Expiration term of service (ETS) date (ask about plans for reenlistment).
- h. Date eligible for return from overseas (DEROS) (ask about extension).
- i. Pending reassignment orders, reporting date at new installation. Get a copy of the orders and find out about the soldier's plans.

### 2. **Driving experience.**

- a. When did the driver start to drive?
- b. When did the driver first obtain a driver's license?
- c. Types of driver's licenses and dates (get copies).
- d. Driver training courses, dates of instruction.
- e. Types of vehicles operated in the past for pleasure or business; add specifics on experience and training.
- f. If the driver has been awarded a wheeled vehicle military occupational specialty, find out specifics of training and experience.
- g. Accident record.
- h. Enforcement record.

### 3. **Vehicle involved in the accident.**

- a. How familiar was the operator with the vehicle (was it the operator's assigned vehicle or the first time the operator ever drove it)?
- b. PMCS (Preventive maintenance, checks, and services).
  - (1) Was PMCS pulled?
  - (2) Who pulled it?
  - (3) Where is the PMCS checklist for that day?
  - (4) If necessary, have the driver show you how PMCS was performed.
  - (5) Find out who else assisted with, witnessed, or checked PMCS.
- c. Was there any problem with the vehicle (especially if the PMCS checklist is not available or does not list a defect)?
- d. Did the vehicle develop a problem after the trip started? Was this a problem that had happened before? What action was taken once the problem was recognized?

### 4. **The trip.**

- a. What were the driver's normal assigned duties?
- b. Was the trip part of these duties?
- c. Had the driver driven the route before or was the driver unfamiliar with the route?
  - (1) How many times did the driver drive the route?
  - (2) If unfamiliar with the route, what directions did the driver get or what maps were provided?
- d. Who authorized the trip?
- e. Why was the trip authorized?
- f. How long did the driver expect the trip to take?
- g. Before the driver set out on the trip, how much sleep did he or she have the night before and what did the driver do before starting? Was the driver tired or alert? This is the point to ask about alcohol and drugs (see questions in paragraph 8).
- h. Who else was in the vehicle (get full personal information)?
  - (1) Why were they in the vehicle?
  - (2) What did they do during the trip?
- i. Have the driver take you through the trip from start point/time to destination and then to return. Ask the driver to describe the trip as planned and then as it actually happened.
  - (1) Get a map and ask the driver to show you the route on the map.

## Enclosure 2 - Investigators Interview Checklist for Vehicle Accidents

- (2) If the route is not the most direct route, ask the driver to explain any deviation and to include any reasons for the deviation.
- (3) Indicate any interruptions or rest stops. Determine the reason for each stop, what happened during the stop, and the duration of the stop.

### 5. **The accident.**

- a. If possible, visit the accident scene with the driver.
- b. If relevant (and possible), drive the route with the driver.
- c. Have the driver describe the sequence of events up to, during and after the accident.
  - (1) When did the driver see the other vehicle?
  - (2) What was the driver's speed at the time of the accident?
  - (3) What evasive or other actions did the driver take?
  - (4) Did the other driver see our vehicle?
- d. If the driver completed an accident report, ask the driver to review it and explain any omissions or errors.

### 6. **Injuries.**

- a. Was our driver injured?
- b. Names of other injured parties (compare with accident reports).

### 7. **Witnesses.**

- a. Names of any witnesses known to the driver.
- b. What did the witnesses supposedly see?
- c. Any oral statements by witnesses the driver recalls?

### 8. **Alcohol/Drugs.**

- a. Find out if the driver is a drinker.
- b. If the driver does drink, when was alcohol last consumed before the accident?
  - (1) How much alcohol?
  - (2) Types of drinks?
  - (3) Was the alcohol taken with a meal?
- c. Drug use? Get specific if you suspect it.
- d. Was the driver taking medication?
  - (1) Name of drug.
  - (2) Get bottle if a prescription medication.
  - (3) Why was the driver taking medication?
  - (4) Did it affect his or her driving?
  - (5) Get specifics on amount taken, when, and whether the driver had used it before.

### 9. **Diagrams.**

Show the driver other accident diagrams if available and ask if they are accurate. If not, have the driver explain why.

### 10. **Insurance.**

- a. Consider the following insurance sources:
  - (1) Automobile insurance
    - (a) Injured party's own (even if injured party's vehicle was not involved).
    - (b) Owner of automobile.
    - (c) Driver of automobile.
  - (2) Homeowner's insurance.
  - (3) Property insurance.
- b. Always ask for the following information about an insurer:
  - (1) Full name of company.
  - (2) Address/Telephone number of insurer.
  - (3) Name of adjuster/representative.
  - (4) Amount of claim, date filed, and date of payment.



## PROCEDURES

DA Form 1208 (Report of Claims Officer) does not have to be typed, but it must be legible. Information on the form must be clear to claims personnel and receiving state authorities who may have to read and translate it. Unit claims officers (UCOs) will complete DA Form 1208 as follows:

### General Information.

Date of Report. Self-explanatory.

Headquarters. Enter designation and APO address of unit involved in the incident.

Location. Enter unit location.

1. **Accident or Incident.** Enter date, hour and place of incident in appropriate blocks.
2. **Claimants.** When available, enter claimant's name and address. If not available, leave empty, but complete the rest of the form. Claimants may file with receiving state authorities instead of UCOs or FCCs. In those instances, this report will provide the relevant information about U.S. involvement.
3. **Property and Personnel Involved.**

**Government Property.** Identify U.S. vehicles involved with vehicle type, bumper markings, and license plate number. Describe the condition of the military vehicle before and after the incident. If the foreign national is at fault (partially or in full) this information will aid in an affirmative claim against that person for damaging U.S. property or injuring U.S. personnel, or at least reduce U.S. liability. If available, attach photographs of damaged property.

**Private Property.** Provide all available information. Do not delay, however, trying to get information that is not reasonably available or information that the servicing judge advocate can get from other sources. When possible, interview claimants or foreign national involved. Provide a description of the property before and after the incident. If a vehicle is involved, include the model, and license number. If available, attach photographs of damaged property.

**U.S. Government Personnel.** Enter name, rank or grade, position, social security number, current assignment, DEROS (if overseas), ETS date, and telephone number of U.S. personnel involved.

**Civilian and Foreign Nationals.** Enter names, nationalities, addresses and telephone numbers of non-U.S. Forces persons involved.

4. **Scope of Employment.** Leave blank, the servicing judge advocate or FCC will determine this.
5. **Damage to Property.** Fully describe the damage to government and private property involved. Estimate repair costs.
6. **Persons Injured or Killed.** List U.S. Forces and private persons injured or killed. If personnel were hospitalized, indicate where, how long, and transfers to other facilities. Do not delay the investigation if this information is not readily available.
7. **Witnesses.** List names, addresses, and telephone numbers of witnesses not included in block 3.
8. **Police Investigation and Trial.** Try to obtain local police reports. If authorities are reluctant to release the information, do not delay the investigation.
9. **Findings.** Fully describe the incident. Reference to police reports and witness statements (e.g. See attached statements) is not enough. The UCO must make independent findings of fact taking into account personal observation and all evidence obtained.

Enclosure 3 - Instructions for Completing DA Form 1208 (Report of Claims Officer)

10. **Exhibits.** List all exhibits and attach them to the report.

11. **Recommendations.**

**It is Recommended That.** Leave this block blank.

**Reasons for Recommendations.** Leave this block blank.

UCOs will send their recommendations on a separate sheet of paper. This is because local (receiving state) law often determines payment of claims. Claimants who are not satisfied with their settlements may go to court. The DA Form 1208 may be made available to the claimant and to the local court for use in the proceedings. Because UCOs are not expected to know local laws, their recommendations about whether or how much to pay on a claim may be erroneous. If they are included on the DA Form 1208, they may prejudice the United States' position in court.

**Claims Officer.** The UCO will include his or her name, and sign and date the forms in the appropriate blocks.

12. **Action of Commanding Officer or Staff Judge Advocate.** Leave this block blank.

Forward the completed form along with all exhibits and attachments and your recommendations to the servicing claims office or FCC.

## **APPENDIX C**

### **DEPLOYMENT CLAIMS OFFICE OPERATION OUTLINE**

- I. PURPOSE. TO OUTLINE THE PLANNING FACTORS NECESSARY TO CONSIDER DURING THE PREDEPLOYMENT, DEPLOYMENT/STATIONING PHASES OF A DEPLOYMENT OF U.S. FORCES INTO A FOREIGN COUNTRY (A “RECEIVING STATE”) IN ORDER TO OPERATE AN EFFECTIVE FOREIGN CLAIMS ACTIVITY.**
- II. OVERVIEW. THE AR 27-20 SCHEME. AR 27-20, LEGAL SERVICES—CLAIMS (31 DEC 1997), ENVISIONS THE FOLLOWING GENERAL SCHEME FOR DEPLOYMENT CLAIMS OPERATIONS:**
  - A. Unit Claims Officers (UCOs) and Maneuver Damage Control Officers (MDCOs) are appointed by unit commanders and trained by unit or claims judge advocates or Foreign Claims Commissioners;
  - B. During the course of deployments, UCOs and MDCOs investigate claims incidents and forward potential claims files, both against and on the behalf of the U.S., to servicing judge advocates. DA Forms 1208 (Report of Claims Officer) are completed and forwarded as well when appropriate.
  - C. Unit judge advocates forward potential claims files and completed DA Forms 1208 to the appropriate Foreign Claims Commission (FCC) for further processing and entry into the potential claims journal.
  - D. Potential claims files are transferred to the active claims files system and given a claims file number when a claimant actually files a claim.
  - E. FCCs investigate actual claims as necessary, and adjudicate them. Claimants are notified of the commissions’ decisions, and approved claims are processed for payment.
  - F. Special Claims Processing Offices (SCPOs) handle the claims of members of the force or civilian component for damages to personal property.
- III. PREDEPLOYMENT PLANNING AND TRAINING**
  - A. Ensure that all units have UCOs, and MDCOs if necessary, appointed on orders.
  - B. Coordinate the training of UCOs and MDCOs in proper investigative techniques and completing accident report forms with MP personnel.
  - C. Coordinate the training of UCOs in compiling potential claims files and completing DA Forms 1208 with unit or claims judge advocates.
  - D. Train an NCO to serve as a Foreign Claims NCOIC. Foreign Claims NCOICs maintain the potential claims files and journal, the actual claims files and journals, and fiscal accountability. Foreign Claims NCOICs also coordinate the activities of the UCOs and MDCOs.
  - E. Determine force protection requirements in area of operations. Claims personnel should be licensed to drive available military vehicles, to use required weapons (including crew-served weapons), and to be combat lifesavers whenever possible.
  - F. To service a division-sized unit, train three judge advocates to serve as Foreign Claims Commissioners. Each can serve as a one-member Foreign Claims Commission to handle claims up to \$15,000 for their respective

brigades. Together, the three can serve as a three-member commission, which can handle claims up to \$50,000 for the division, if necessary.

- G. Secure a supply of the forms listed on the Claims Deployment Checklist in chapter 32 of this Handbook for possible use by a FCC.
- H. Train one judge advocate and one NCO to staff an SCPO.

#### **IV. DEPLOYMENT PLANNING**

- A. U.S. Army Claims Service (USARCS). Immediately upon being informed of a possible deployment, contact the Chief, Foreign Torts Branch, USARCS, Ft. Meade, MD, for current claims information and technical guidance. USARCS has the authority to constitute FCCs, appoint Foreign Claims Commissioners, and issue fund cites to foreign claims. This authority may be delegated to a command claims service or to a Staff Judge Advocate as necessary.
- B. Planning Factors. The exact structure and operation of a deployment claims activity depends upon several factors:
  - 1. Type and duration of deployment. Is the operation an evacuation of noncombatants from a hostile area, or will the unit be deployed to the area for a significant period of time?
  - 2. Area to which U.S. forces will be deployed. Logistically, how close is the area to installations where U.S. forces maintain a permanent or significant presence? How isolated will the unit be?
  - 3. Existence of stationing agreements or MOUs governing the presence of U.S. forces. Stationing agreements, like the NATO Status of Forces Agreement, may preempt the ordinary application of U.S. foreign claims statutes and regulations. What legal status will members of the force or civilian component have in the area?
  - 4. Single Service Responsibility (SSR). Department of Defense (DoD) Directive 5515.8 (1990) assigns SSR for claims for certain countries to particular service components. The U.S. Army, for example, is assigned Germany. Does another service component already have SSR for the area to which the unit will deploy?
  - 5. Predominate Service Component. If SSR is not already assigned, which service will be the predominate service component, if any, in the deployment? Under DoD Directive 5515.8, the appropriate unified or specified commander may make an interim designation of SSR. In the absence of such designation, each service component will have Individual Service Responsibility (ISR) for its own claims.

#### **V. DEPLOYMENT/STATIONING PHASE. ONCE THE UNIT HAS BEGUN DEPLOYING INTO THE RECEIVING STATE, THE FOLLOWING FACTORS NEED TO BE CONSIDERED IN CONDUCTING A DEPLOYMENT CLAIMS ACTIVITY:**

- A. Coordination with receiving state authorities. It is very important to inform host nation authorities of the way in which the deployment claims activity will work. They have an interest in seeing claims resulting from damages to their citizens and property properly handled. If a NATO SOFA-style stationing agreement exists, for example, this interest may have significant status as a matter of international law.
- B. Coordination with Civil Military Affairs personnel. The CMA activities can provide invaluable help in liaison with both local officials and the local population itself, as well as providing information about the local culture and customs which may have an impact on the adjudication of claims.
- C. Claims activity publicity. Whether by means of the mass media or even by soldiers handing out pamphlets to local nationals, the local population must be given basic information about claims procedures. This will expedite

the processing of claims in general and will help resolve meritorious claims before they become a public relations problem. Coordination with PAO and the SJA must occur before claims information is publicized. U.S. State Department officials may also wish to be consulted.

- D. Claims intake procedures. The deployment claims activity must set up an intake procedure for foreign claims. This may be something as simple as setting aside two days a week for the receipt of claims and dissemination of claims status information to claimants. Particular forms may have to be devised to expedite and simplify the intake process.
- E. Translation capabilities. Translators should be secured as quickly as possible to help the deployment claims activity. Translators help in the investigation of claims, the translation of intake forms and claimants' submissions, and the translation of correspondence.
- F. Local legal advice. As interpreted by AR 27-20, local law most often determines liability and the measure of damages under the Foreign Claims Act. A local attorney is often necessary to explain local law, particularly in areas without a Western-style legal system.
- G. Security. Physical security of the deployment claims activity includes such measures as not making the Foreign Claims Commissioner a Class A agent, and ensuring that crowd control measures are in effect on intake days. Security also includes fiscal security, that is, checking the adjudication of claims to ensure that local organized crime elements are not trying to manipulate the claims system.
- H. Coordination with Military Intelligence personnel. As was demonstrated in Grenada, claims offices can become very fertile ground for intelligence gathering. Military Intelligence personnel can likewise provide important information for claims investigations.
- I. Coordination with UCOs and MDCOs. To make the claims activity run smoothly and efficiently, UCOs and MDCOs should be conducting most of the investigation of claims at their level. Because they are just on additional duty orders, and not legally trained, they must often be closely supervised to ensure that claims investigations are done properly.
- J. Coordination with Military Police personnel. As trained investigators, MPs can provide invaluable assistance to UCOs both in the course of actual investigations and in the compiling of reports after claims incidents. The Deployment Claims NCOIC should receive copies of the blotter on a daily basis and collect information related to potential claims against the United States.
- K. Coordination with Local Finance Offices. Ensure Class A agents are trained and available for claims missions. Also ensure that local currency will be available to pay claims.
- L. Coordination with Non-Governmental Organizations (NGOs) and Other Governmental Organizations (OGOs). Depending upon the area into which the unit deploys, it could find various international and charitable organizations already operating there. Likewise, other agencies of the U.S. government may also be operating in the area. The operation of these NGOs and OGOs may have a direct impact on a deployment claims activity. For example, many of these organizations might pay for claims (in cash or in kind) which the FCCs cannot under the applicable statutes and regulations.
- M. Coordination with USARCS or command claims services. Frequent coordination with USARCS or with the responsible command claims service is necessary to ensure that funds are available to pay claims and to maintain claims accountability. Both services also provide continuing technical oversight and logistical support.

## **APPENDIX D**

### **SAMPLE DEPLOYMENT CLAIMS SOP**

**I. INTRODUCTION. THIS SOP IS BASED UPON THAT USED BY USACSEUR TO HANDLE CLAIMS UNDER ITS FOREIGN CLAIMS COMMISSIONS (FCCS). THE ACTUAL SOP USED IN A DEPLOYMENT SITUATION BY AN FCC WILL VARY WITH THE MISSION AND THE CIRCUMSTANCES OF THE DEPLOYMENT.**

#### **II. UCO/MDCO COORDINATION**

- A. Receive claims investigation packets from UCOs/MDCOs, including completed DA Forms 1208, Report of Claims Officer; and Maneuver/Convoy Maneuver Damage Report Forms. DA Forms 1208 need not be typed, but must be used for all but the simplest cases.
- B. Register potential claims in potential claims log, both against or on behalf of the U.S. On a monthly basis, forward information with regard to possible claims on behalf of the U.S. to USARCS or the responsible command claims service.
- C. Make a potential claims file with the investigation packets or whatever information is available.
- D. Direct UCOs/MDCOs to make whatever further investigation is appropriate, or conduct further investigation yourself. In particular, seek military police reports, local police reports, trial results or relevant counseling statements, hospital logs, and even local newspaper accounts.

#### **III. LOGGING IN CLAIMS**

- A. Make notation in potential claims log that claim actually received.
- B. Pull potential file, and insert materials into new case file on the right hand side in reverse chronological order.
- C. Staple new chronology sheet (Enclosure 1) onto left side of folder.
- D. Fill in the claimant's name, the amount claimed in local currency and converted to dollars using the exchange rate on the day the claim was filed, the date of the incident, and the date the claim filed. The official exchange rate, or "peg rate," is available from the servicing finance office.
- E. Annotate the claim in the actual claims log using the next available claims number. Use DA Form 1667, Claims Journal. On the file folder the file number should be written on the left hand corner using the FY, the assigned commission number, the type of claim (use "T" for in-scope tort, "M" for maneuver damage, or "N" for non-scope tort), and the next available claims number. For example, 96-E99-T001.

#### **IV. NEW CLAIM PAPERWORK.**

- A. If the claimant is represented by an attorney, make sure a POA is in the file, under the chronology sheet.
- B. Write up certificate as to whether the claim is in-scope or non-scope (Enclosure 2), if required by claims regime under which you are operating. A certificate is required as to the type of claim in areas where the NATO SOFA or a NATO SOFA analog applies.

- C. Ensure that either SF 95, Claim for Damage, Injury or Death or a bilingual form patterned after USACSEUR Form 100 is properly filled out. A dual language form must note as a minimum the time, place and nature of the incident; the nature and extent of the loss, and the amount of compensation claimed.
- D. Determine whether claim is filed within the two-year statute of limitation.
- E. If the tortfeasor will pay voluntarily, write “P” on the right front corner of the file.
- F. If Art. 139, UCMJ, is to be used, write “139” on the right hand corner of the file.
- G. Maintain 30-day suspense for correspondence with claimants. Annotate correspondence on chronology sheet.

## **V. ADJUDICATION REVIEW.**

- A. If claimed amount is over your authorized payment threshold, send completed file with any comments or recommendations up to next higher claims authority.
- B. If within your authority, determine the applicable claims laws and regulations, and whether you have Single Service Responsibility (SSR) under DoD Directive 5515.8 or Individual Service Responsibility (ISR) for the claim.
- C. Review substantiation of causation and of damages. Consult USACSEUR policy guidelines, local law, and USARCS or the responsible command claims service if there are further questions.
- D. Prepare decision in either data sheet form (Enclosure 5) if the settlement is under \$2,500, or as a seven-paragraph memorandum for denials and approvals over \$2,500 (Enclosure 6).
- E. For claims under \$2,500, use DA Form 1668, Small Claims Certificate.
- F. In cases involving non-scope misconduct by soldiers, send either the decision memo or the data sheet to the soldiers’ commander with a request for the commander to counsel the soldiers accordingly. If the soldiers choose to voluntarily pay, document the payment on DD Form 1131, Cash Collection Voucher and send the voucher and payment to finance using DA Form 200, Transmittal Record.
- G. If tortfeasor will not pay voluntarily, advise commander of the possibility of Art. 139, UCMJ, procedures.
- H. Prepare letter to claimant or representative in English with a courtesy copy in local or third language informing the claimant of your decision. In cases where payment will be approved, have claimant sign the appropriate release form, DA Form 1666, Claims Settlement Agreement. In cases where claims are to be denied, claimants should be notified of such and given the opportunity to submit additional matters for consideration before a final decision is made.

## **VI. PAYMENT.**

- A. Use SF 1034, Public Voucher, to pay the claimant. Attach DA Form 1666 (Claims Settlement Form), DA Form 1668 (Small Claims Certificate), and either the data sheet or seven-paragraph memo to the voucher, as appropriate. Send all materials to finance under DA Form 200. Also include a copy of the POA if necessary.
- B. Depending on the situation, coordinate with USARCS or a command claims service before payment to review any questions and to obtain a fund cite and make sure that funds are available.
- C. Coordinate with Finance to ensure that local currency is available to pay the claimant. The Foreign Claims Commissioner should arrange for a Class A agent (generally, not the Commissioner) to disburse the cash.

- D. Forward a brief monthly claims report noting claims received, adjudicated and paid to USARCS or the responsible command claims service. Also include amounts paid out, fund cites used, exchange rates and any other relevant information. Send up all completed claims files for review and storage by USARCS or the responsible command claims service.

## **VII.REPORTING CLAIMS AND CLAIMS LOG.**

- A. It is important that the settlement of claims be reported to the responsible claims service for a number of reasons, the foremost of which, is to keep track of expenditures. No standard format or report form currently exists for reporting deployment claims. Deploying claims personnel should look at claims reports filed by their predecessors or contact the appropriate claims office for guidance. At a minimum, claims reports should be submitted monthly and include the following information:

### **1. FCA Claims**

- a. Current month
  - (1) Amount paid
  - (2) Number filed/paid/denied/transferred
- b. Total Claims Received (during operation)
- c. Total Claims Pending Action
- d. Total Claims Paid
- e. Total Claims Denied
- f. Total Claims Transferred
- g. Total Amount Claimed in Local Currency and U.S. Dollars
- h. Total Amount Paid in Local Currency and U.S. Dollars

### **2. NATO/PFP SOFA Claims**

- a. Total Claims Received
- b. Total Pending Action
- c. Total Scoped
- d. Total Claims Denied
- e. Total Claims Transferred
- f. Total Amount Claimed in Local Currency and U.S. Dollars
- g. Total Amount Paid in Local Currency and U.S. Dollars
- h. Total *Ex Gratia* claims, amount paid, and amount claimed



- B. It is also important that claims be logged. This became extremely important during Operation Joint Endeavor/Guard/Forge because of the amount of claims activity and duration of the operation. When there are a large number of claims being adjudicated by a number of different FCCs and the FCCs subsequently change, there is high probability of losing track of claims without a standardized logging system. The responsible claims service will determine the format for logging claims, see Enclosure 8 for an example log using Microsoft Excel during Operation Joint Endeavor/Guard/Forge. This format is available in electronic form at USARCS.

## **ENCLOSURES**

1. Claims Chronology Sheet
2. Sample Scope Certificate
3. Request for Ex Gratia Award
4. Example Implementing Guidance for Real Property Claims
5. Foreign Claims Commission Data Sheet
6. Foreign Claims Commission Memorandum of Opinion
7. Partial Claims Settlement Agreement
8. Foreign Claims Commission Claims Log

Enclosure 1 - Claims Chronology Sheet

**CLAIMS CHRONOLOGY SHEET**

CLAIMANT'S NAME: \_\_\_\_\_ FILE # \_\_\_\_\_

AMOUNT CLAIMED: \$ \_\_\_\_\_ AT: \_\_\_\_\_

DATE OF INCIDENT: \_\_\_\_\_

DATE CLAIM FILED: \_\_\_\_\_

DATE RECEIVED		SUSPENSE DATE

Enclosure 2 - Sample Scope Certificate

**DEPARTMENT OF THE ARMY  
U.S. ARMY CLAIMS SERVICE, EUROPE  
Unit 30010, APO AE 09166-5346**

AEAJ-CD-FC

15 November 2000

MEMORANDUM FOR BAD DRECKSFELD DCO

SUBJECT: Scope Certificate

\_\_\_\_\_ The act(s) or omission(s) of the member(s) or employee(s) of the U.S. forces or its civilian component was (were) done in the performance of official duty.

\_\_\_\_\_ Use of the vehicle of the U.S. forces was unauthorized.

\_\_\_\_\_ A Foreign Claims Commission will adjudicate this non-scope type of claim on receipt of your report.

\_\_\_\_\_ U.S. forces were not involved in this incident.

FOR THE CHIEF:

JOE D. SNUFFY  
CPT, JA  
Foreign Claims Commissioner

UNITED STATES ARMY

REQUEST FOR *EX GRATIA* AWARD

THIS FORM MUST BE FULLY COMPLETED AND SUBMITTED IN TRIPLICATE

APPLICANT Name and address:

\_\_\_\_\_  
(Name in full)

\_\_\_\_\_  
(Street )

\_\_\_\_\_  
(City)

\_\_\_\_\_  
(Zip code)

REQUESTED AMOUNT

Property damage: \$ \_\_\_\_\_

Personal injury: \$ \_\_\_\_\_

Total amount claimed: \$ \_\_\_\_\_

INCIDENT

Date: \_\_\_\_\_

Hour: \_\_\_\_\_

Place: \_\_\_\_\_

Give a detailed description of the incident. Identify all persons and property involved. Attach all supporting evidence.

\_\_\_\_\_  
\_\_\_\_\_

PROPERTY DAMAGE

State name and address of owner, if other than claimant. Describe and substantiate the age and condition of the damaged property. Describe necessary repair and substantiate all costs.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Are you entitled to recover Value-Added Tax ? Yes ( ) No ( )

List all insurance applicable to damaged property.

Name of Insurer \_\_\_\_\_

Policy number: \_\_\_\_\_

Enclosure 3 - Request for Ex Gratia Award

Dates of coverage:

Deductible amount: \$

Auto comprehensive:

PERSONAL INJURY -

State name and address of injured persons. Describe and substantiate nature and extent of injury and required medical treatment.

Specify any other source of recovery, e.g. health insurance, social insurance, workmen's compensation fund, employer, Victim Compensation Act. State nature and amount of compensation.

WITNESSES

State names and addresses of known witnesses.

CERTIFICATION

I understand that the United States Government is not liable for the aforementioned damages and that any ex gratia award which may be offered is done so as a voluntary gesture of goodwill. I certify that my statements above are complete and correct to the best of my knowledge and belief and that each requested item is entirely and exclusively related to the aforementioned incident. Finally, I certify that I have not received nor am I eligible to receive any compensation or payment for those damages from any third party. I understand that any nondisclosure or fraudulent statement on my part may result in denial of my request or in reduction of any award. If an award is offered and if I accept that award, I agree that such acceptance will be in full satisfaction and final settlement of all my claims arising from that incident and that I shall have no further claim against the tortfeasor or any third party.

Place

Date

Signature of Applicant

This guidance is based upon that used by during Operation Joint Guard/Forge to handle real property claims. The actual guidance issued in a deployment situation will vary with the mission and the circumstances of the deployment.

**Technical Guidance – In Support of Operation \_\_\_\_\_:**

**Processing of Claims (Demands for Payment) for Rent (the Use of Real Property) for Which There is No Lease**

**I. REFERENCES:**

- A. OPORD
- B. Any Previous Technical Implementing Guidance for Termination and Restoration Settlements for Properties Leased in Support of the Operation
- C. Army Regulation 27-20

**II. GENERAL:**

In general, claims are requests for compensation, normally written demands for payment, made against the United States. All claims against U.S. Forces must be received and accepted for processing by the servicing Claims Office of the servicing Staff Judge Advocate Office. The Claims Office will review each claim to determine if it includes a demand for rent.

Claims offices will handle claims that do not include a demand for rent of the property through the normal claims process. When the claims office receives a claim for rent (use of real property for more than 30 consecutive days) or both rent and damages to that property, the Claims Office will verify: 1) that the claimant owns the property; 2) that the U.S. Forces currently or previously occupied the property; and 3) the duration of the period during which the property was occupied by U.S. Forces.

If the U.S. Forces currently occupy the property or previously occupied the property for more than 30 days, the demand will be transferred to the Real Estate Contracting Officer to negotiate a lease to include a settlement in lieu of restoration for any damages from occupancy. If the Real Estate Contracting Office is unable to negotiate a reasonable lease or settlement in lieu of restoration, the claim will be transferred back to the claims office for settlement or denial through the normal claims process.

**III. DETAILED IMPLEMENTING GUIDANCE:**

1. All real property claims must be received and accepted for processing by the servicing Claims Office or the servicing Staff Judge Advocate office. The servicing Claims Office will log all claims and assign a claim number to each claim.
2. The Claims Office will screen all claims to identify those that demand rent (use of real property) or both rent and damages to the property. A demand for rent is defined as a monetary demand for the use of real property for a continuous period of more than 30 days. A demand will not ordinarily be considered a claim for rent if it is for intermittent and/or temporary use of the property (never used by U.S. Force for more than 30 continuous days). Claims for the use of land for intermittent and or temporary use may be considered as torts.
3. When the Claims Office receives a demand of both rent and damages to that property, the Claims Office will verify the claimants ownership of the property and that U.S. Forces currently occupy or occupied the property and for what period. If either ownership or occupancy cannot be established, the claims office can properly deny the claim. The claims office will notify the claimant of the denial.
4. If the claimant owns the property and U.S. Forces currently occupy the property:

#### Enclosure 4 - Example Implementing Guidance for Real Property Claims

(1) The claim will be transferred to the local Real Estate Contracting Officer, and the Claims Office will annotate in the log that the demand was transferred to Real Estate. At this point, the claim is no longer treated as a claim, but as a request for a lease.

(2) The Real Estate Contracting Officer will verify that there is no conflicting claim of ownership or contract covering the property, and will thereafter negotiate a lease covering the entire period of anticipated occupancy. The lease may provide for a one time payment for any period of past occupancy and periodic or one time payment for the remainder of the anticipated use. The Real Estate Contracting Officer will attempt to include in any negotiated lease a waiver of any future claim for restoration.

5. If the U.S Forces do not currently occupy the property, then the Claims Office will verify:

(1) That the U.S. Forces actually occupied this real property and for what period; and

(2) That the claimant is the owner of the property.

(3) If both are established, the demand will be transferred to the local Real Estate Contracting Office who will attempt to negotiate a lease covering the period of occupancy. The Claims Office will annotate in the log that the claim was transferred to the Real Estate Office.

(4) Real Estate Contracting Officers will use their best efforts to negotiate a lease providing for a one time payment covering both the fair market rent for the period of actual occupancy and a settlement in lieu of any restoration for damages asserted and caused by the U.S. Forces. Real Estate Contracting Officers will notify the Claims Office when a lease is successfully negotiated so that the claim log can be annotated.

6. If the Real Estate Contracting Officer is unable to negotiate a reasonable lease/settlement for property currently or previously occupied, the claim will be transferred back to the Claims Office for settlement or denial through the normal claims process. The normal claims procedure should only be used as a last resort to settle or pay claims for rent or both rent and damage to property that cannot be resolved reasonably by the Real Estate Contracting Officer.

7. If the Claims Office settles a real property claim while a lease is pending, it will forward a copy of all investigative information and settlement documents to the appropriate Real Estate office to ensure the claimant is not compensated twice for the same damage at the conclusion of the lease.

FOREIGN CLAIMS COMMISSION DATA SHEET

1. FCC #: \_\_\_\_\_ 2. FCC#: \_\_\_\_\_ 3. DATE REQUEST FILED: \_\_\_\_\_

4. NAME AND ADDRESS OF CLAIMANT:

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5. NAME AND ADDRESS OF REPRESENTATIVE:

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6. DATE AND PLACE OF  
INCIDENT: \_\_\_\_\_

7. AMOUNT REQUESTED: \_\_\_\_\_ 8. EQUIVALENT IN U.S. CURRENCY: \_\_\_\_\_

9. FACTS: \_\_\_\_\_

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10. LIABILITY: The request is/is not cognizable and considered meritorious.

11. VOLUNTARY RESTITUTION: A request for voluntary restitution has/has not been sent out.

12. QUANTUM: Amount requested: \_\_\_\_\_ Amount approved: \_\_\_\_\_

13. ACTION: \_\_\_\_\_

14. ADJUDICATOR'S SIGNATURE/DATE: \_\_\_\_\_

15. AMOUNT ALLOWED: \_\_\_\_\_

16. EQUIVALENT IN U.S. CURRENCY: \_\_\_\_\_

17. COMMISSIONER'S SIGNATURE/DATE: \_\_\_\_\_



**U.S. FOREIGN CLAIMS COMMISSION MEMORANDUM OF OPINION**

1. Identifying Data.

- a. Claimant:
- b. Attorney:
- c. Date and place of incident:
- d. Amount of claim / date request filed / date request received from DCO:
- e. Brief description of claim:
- f. Co-cases:

2. **Jurisdiction.** This request is presented for consideration under the provisions of the Foreign Claims Act, 10 U.S.C. § 2734, as implemented by Chapter 10, AR 27-20. This claim was filed in a timely manner.

3. **Facts.** There is/is no record that any disciplinary action was taken against the soldier. A request for voluntary restitution has not yet been sent out.

4. **Legal Analysis.**

The claim is/is not cognizable and meritorious.

5. **Damages.**

- a. Repair costs.

Amount requested: \_\_\_\_\_ Amount approved: \_\_\_\_\_

- b. Consequential expenses.

Amount requested: \_\_\_\_\_ Amount approved: \_\_\_\_\_

These costs cannot be favorably considered since they are considered to have arisen in connection with filing the request.

6. **Proposed Settlement or Action.**

7. **Recommendation.**

The request should be compensated in the amount of \_\_\_\_\_.

8. **Document and Witness List.**

JOSEPH J. JONES  
CPT, JA  
Foreign Claims Commissioner

Enclosure 7 - Partial Claims Settlement Agreement

**PARTIAL CLAIMS SETTLEMENT AGREEMENT**

FILE NUMBER: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE OF INCIDENT: \_\_\_\_\_

PLACE OF INCIDENT: \_\_\_\_\_

Brief description of claim/incident:

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I (we), the claimant(s) and beneficiaries, hereby agree to accept the sum of \_\_\_\_\_ as a partial settlement for my claim against the United States Government.

Printed Name of Claimant(s)

Signature of Claimant(s)

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Date: \_\_\_\_\_

Address of Claimant(s)

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TRANSLATOR: Since the claimant does not read English, I hereby certify that I read the document to the claimant before he/she signed the settlement agreement.

\_\_\_\_\_  
Translator

Enclosure 8 - FCC Claims Log

<u>CLAIM #</u>	<u>NAME</u>	<u>AREA</u>	<u>DATE INCIDENT</u>	<u>DATE FILED</u>	<u>AMT CLMD</u>	<u>AMT SETTLED</u>	<u>DATE PAID</u>	<u>REMARKS</u>	<u>STATUS</u>
96-E9I-T002	"Stocar"	Bosnjaci	Dec-95-Jan-96	10-Jan-96	DM 159,383.00	DM 61,000.00	31-Oct-96	2/3 FA camped on land	<b>Transferred to MAJ Prescott @ USACSE</b>
96-E9I-T013	Mato Kovac	Gradiste	1-Jan-96	2-Apr-96	Kn 20,799.00			Camp Harmon(see #35)	
96-E9I-T016	Pero Palijan	Gradiste	1-Jan-96	10-Jan-96				Camp Harmon (see #39)	
96-E9I-T019	"Duro Dakovic"	Slavonski Brod	13-Jan-96	13-Jan-96	DM 3,350.00	Kn1,000.00	11-Jul-97	Barge Cable & anchor	<b>Paid \$160.84</b>
96-E9I-T035	Josip Filipovic	Gradiste	1-Jan-96	2-Apr-96	Kn 20,799.00			Camp Harmon(see #13)	
96-E9I-T036	Martin Zivkovic	Gradiste	1-Jan-96	23-Jan-96				Camp Harmon	
96-E9I-T039	Josip Colak	Gradiste	1-Jan-96	10-Jan-96				Camp Harmon(see #16)	
96-E9I-T086	Izet Tursunovic	Gunja	6-Mar-96					48 Savska	<b>Brought Fwd from 96 log</b>
96-E9I-T127	Bono Bozic		26-Dec-95	8-May-96	DM 1,360.00			Crds for 1stBde,1 <sup>st</sup> AD CA	<b>Denied 23-Dec-96</b>
96-E9I-T136	Luka Lucic	Gunja	6-Mar-96		Kn 2,000.00			6a Krleze-Property Damage	<b>Denied 10-Oct-96</b>
96-E9J-T140	"Hrvatske Ceste"	Croatia	12/95-4/96	12-Jul-96	Kn 51,633,949.00			Road Damage 30-Oct-96	<b>Transferred to MAJ Prescott @USACSE</b>
96-E9J-T141	"Feliks"	Slavonski Brod	20-Dec-95	12-Jul-96	Kn 463,590.00	Kn 116,000.00	27-Apr-97	Contract Dispute-Gravel	<b>Paid Kn by MAJ Prescott116,000.00</b>
96-E9J-T142	Roza Korac	Garesnica	12-Apr-96	12-Jul-96	Kn 2,406.00			Bridge Damage-Driveway	<b>Denied 10-Oct-96</b>
96-E9J-T145	"Electra"	Slavonski Brod	9-Apr-96	13-Jul-96	Kn 7,604.00			Traffic light pole	<b>Denied 10-Oct-96</b>
96-E9J-T153	Zeljko Kapular	Lipovljani	26-Jan-96	22-Jul-96	Kn 78,890.00	Kn 32,500.00	9-Dec-96	Vehicle Accident	<b>Paid \$5,977.67</b>
96-E9J-T160	"Hrvatske Ceste"	Croatia	3-Jan-96	31-Jul-96	Kn 6,525.60	DM 925.50	28-Nov-96	IFOR hit median rail	<b>Paid \$638.28</b>
96-E9J-T165	Josip Kendel	Terelino	29-Mar-96	28-Aug-96	DM 460.00	Kn 1,575.00	24-Oct-96	Vehicle Accident	<b>Paid \$290.11</b>
96-E9J-T166	Nedeljko Marjanovic	Sibinj	22-Jun-96	28-Aug-96	DM 2,550.00	KN 8,925.00	17-Oct-96	Vehicle Accident	<b>Paid \$1,628.55</b>
96-E9J-T167	"Ferimport"	Slavonski Brod	Jul-Aug 96	1-Sep-96	DM 9,500.00	See T037	See T037	Maneuver Damage	<b>See TO37</b>
96-E9J-T168	Ivan Stefanic	Zupanja	12-Jan-96	4-Sep-96				5 Ton hit VW Golf	<b>Withdrawn 24-Sep-96</b>
96-E9J-T169	Mirko Dominkovic	Zupanja	4-Sep-96	4-Sep-96		Kn 2,070.00	17-Oct-96	HEMMT hit VW Golf	<b>Paid \$377.74</b>
96-E9J-T170	"Ferimport"	Slavonski Brod	Jul-Aug 96	5-Sep-96	DM10,050.00	See T037	See T037	Maneuver Damage	<b>See TO37</b>
96-E9J-T171	Pero Blazevic	Split	7-Jan-96	7-Sep-96	Kn 5,588.06			Vehicle Acc. IFOR &1989 Yugo	<b>Denied 10-Oct-96</b>
96-E9J-T172	Anda Miljic	Srpski Brod	May-Jun 96	10-Sep-96	DM 3,500.00	DM 300.00	16-Nov-96	Detonation damage & injury	<b>Paid \$204.08</b>
96-E9J-T173	Vaso Mandalic	Srpski Brod	May-Jun 96	10-Sep-96	DM 3,500.00	DM 300.00	16-Nov-96	Detonation damage & injury	<b>Paid \$204.08</b>
96-E9J-T176	Zvonko Vukojevic	Slavonski Brod	12-Aug-96	11-Sep-96	DM 2,000.00	KN 1,750.00	17-Oct-96	Equip. fell fro.trk-damg fence&clu	<b>Paid \$319.34</b>
96-E9J-T177	Zoran Subota	Zagreb	15-Jan-96	3-Sep-96	Kn3,419.13	KN 2,000.00	17-Oct-96	CUCV hit Audi	<b>Paid \$364.96</b>
96-E9J-T178	Narcisa Cosic	Dakovo	22-Aug-96	16-Sep-96	Kn 10,156.72	KN10,160.00	17-Oct-96	IFOR hit Ford Escort	<b>Paid \$1,854.01</b>
97-E9J-T001	Adriana Curic	Slavonski Brod	30-Jul-96	1-Oct-96	Kn2,840.00			Veh. Acc. Trk.trailer w/Zastava	<b>Denied 9-Oct-96</b>

